

**REMARKS**

The present Amendment is in response to the Office Action dated June 20, 2000. In view of the foregoing amendments and the comments which follow, favorable reconsideration of the subject application is respectfully requested.

In the Office Action, the Examiner has withdrawn the noted allowability of a number of Applicants' claims, and has now entered prior art rejections against all pending claims. More particularly, claims 1, 2, 4 and 5 had been rejected under §102 as anticipated by newly-cited Safar (5,308,320)<sup>1</sup>. Claims 1-12 and 17-25 have been rejected under §102 as anticipated by the newly-cited patent to Hood (USP 5,975,081). Claims 1-18 have been rejected under §102 as being anticipated by the newly-cited patent to Linden (USP 5,626,151). Finally, claim 26 has been rejected under §103 as being obvious over the Hood patent.

In response to these rejections, Applicants have amended the present claim set to further distinguish over all prior art cited to date, and offer the following arguments with respect to the patentability thereof over the currently-applied references.

Turning first to the Safar patent, this reference relates to a portable cardiopulmonary bypass apparatus adapted to provide portable life support to a patient during a bypass operation. The device includes blood handling apparatus including a pump, a device for oxygenating the blood, and optional modules such as a heat exchanger, blood purifier, etc. The field of use of Safar is obviously quite different from that of the invention, and it is presumably for this reason that the Examiner has employed this reference only as against Applicants' broadest claims. In response, claims 1 and 2 have been amended to specify that the "gas dispensing device" is in fact a breathable oxygen delivery system. It is believed that this Amendment serves to clearly distinguish the oxygenation system disclosed by Safar, which oxygenates extra-corporeal blood directly during bypass surgery or the like. Obviously, the system of Safar does not represent a "breathable oxygen delivery system" of the type contemplated by the invention.

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<sup>1</sup> In a telephone conversation had with the Examiner on September 20, 2000, the Examiner indicated that the quoted patent number in the Office Action for the Safar patent was incorrect. The correct patent number is quoted above.

The Hood patent, and indeed the Linden patent as well, relate to full-fledged life support systems which are designed to fully contain a human patient and provide most of the capabilities of a hospital setting. The apparatuses of Hood and Linden exist only in the minds of their creators; if ever actually implemented, these systems would easily cost several million dollars per unit and for this reason do not represent practical appliances. In contrast, the present invention relates to a highly functional, low cost, truly portable medical appliance for mobile use.

In terms of the present claims, the claims have already been amended to specify the present invention as "portable". Hood and Linden represent "portable" systems only to the extent that they are capable of being carried by, at minimum, two persons. Certainly this stretches the usual definition of "portable" to or beyond its normal limits. In any event, however, in response to the rejections based upon Hood and Linden, the independent claims have been amended to specify that the device according to the invention is "hand-held". It is clear that the devices of Hood and Linden are neither "portable" in the usual sense and certainly not "hand-held". Moreover, there is no possibility of reducing the size of the Hood and Linden systems as they are intended to contain an injured victim and as such must be at least large enough to accommodate a normal-sized person.

It is believed that the foregoing comments clearly demonstrate that the references of record are clearly distinguished from the presently claimed invention and, further, that it would not be possible to modify the Hood and Linden devices in particular to reduce their size owing to the peculiarities of their intended usage.

Concerning the §103 rejection over Hood, it is apparent that the Examiner's rejection is based on a mere conjecture that the control system of Hood could be programmed to operate in the manner specified in Applicants' claim 26. It is apparent that such a showing amounts to no more than "obvious to try" reasoning which has been repeatedly rejected by the courts. In any event, it is apparent that a *prima facie* case of obviousness is not made out by a simple declaration of the type presented by the Examiner which, as stated above, amounts to no more than conjecture or speculation.

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In view of the foregoing, it is respectfully submitted that the rejections of record are overcome, and that claims 1-26 now stand in condition for allowance in the absence of more pertinent prior art. Accordingly, favorable further action is respectfully solicited at this time.

Should the Examiner has any remaining questions concerning the present application, he is invited to contact the undersigned attorney at the local telephone number listed below.

Respectfully submitted,



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